

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
(Appellate Jurisdiction)

Civil Appeal Case No. 6 of 2012

**BETWEEN : EDWIN HAPSAI**  
Appellant

**AND: FAMILY ALBERT**  
Respondent

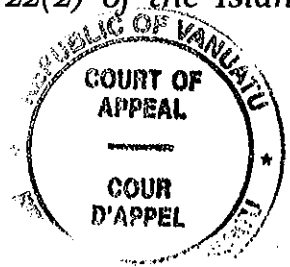
Coram: Hon. Justice John W. Von Doussa  
Hon. Justice Ronald Young  
Hon. Justice Robert Spear  
Hon. Justice Oliver Saksak  
Hon. Justice Dudley Aru

Counsel: Mr. Saling Stephens for the Appellant  
Mrs. Grace Nari for the Respondent

Date of Hearing: 26<sup>th</sup> April 2012  
Date of Judgment: 4<sup>th</sup> May 2012

**JUDGMENT**

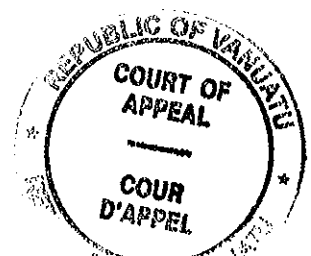
1. This is an appeal against an interlocutory decision or ruling by Fatiaki J dismissing an application by the Appellant Edwin Hapsai to reinstate Land Appeal Case No.14 of 1993.
2. The grounds of appeal are that the primary Judge erred in law and fact or of mixed facts and law as follows:
  - i. *“by proceeding to entertain and disposed off the Appellants Application as a single Judge of the Supreme Court dealing with a customary land application contrary to section 22(2) of the Island Courts Act CAP 167.*



- ii. *failing to take into consideration and/or give weight to the appellant's evidence and submission, in particular the Court of Appeal Judgment in respect of Remy v. Palaud VUCA CC No. 15 of 2005*
  - iii. *Misdirected himself in that after having held that the expression "substantial justice" occurs in rule 1.7 (b) of the Civil Procedure Rules which deals with the position of a case scenario relative to no provision exists a provision or rule of law applicable to the revival or re instatement of a discontinued proceedings under the rules contradicts himself by holding that the relevant provision or rule of law to the revival or reinstatement of a discontinued proceedings Rule 9.9 (4))(a) of the Civil Procedures Rules expressly prohibits the revival of the discontinued appeal by the Appellant.*
  - iv. *Further or other grounds as may be advanced by Appellant's Counsel."*
3. Also filed was an Application for leave to appeal supported by sworn statements filed by Mr. Stephens and Mr. Hapsai.
  4. Pursuant to Rule 21 of the Court of Appeal Rules, leave to appeal is required in interlocutory matters.
  5. Such leave is usually granted where there is a legal issue or a question of law to be determined.
  6. The background to this appeal is that Fatiaki J was dealing with an Application to reinstate Land Appeal Case No. 14 of 1993 which was discontinued by a Notice of Discontinuance dated 8 December 2005 and signed by Mr. Stephens on behalf of the Appellant.
  7. Rules 9.9 (4) (a) stipulates that:

*"If the Claimant discontinues:*


- a) *The Claimant may not revive the claim."*



8. The primary Judge was correct in identifying that the applicable rule of law dealing with discontinued proceedings is Rule 9.9(4)(a) referred to above and is “the relevant applicable provision and in unequivocal terms, expressly prohibits the revival of the discontinued appeal by the appellant.”
9. There is no reason for this Court to dwell on the grounds of appeal as the appeal is clearly misconceived therefore leave to appeal must be refused.
10. The Respondents are entitled to their costs to be taxed failing agreement.

DATED at Port Vila this 4<sup>th</sup> day of May, 2012

BY THE COURT

  
.....  
Hon. J. W. von Doussa, J

